IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

WEDNESDAY, THE 17TH OCTOBER 2007 / 25TH ASWINA 1929

WP(C).No. 17751 of 2007(L)

PETITIONER:

S.SUMITHRA DEVI, AGED 27 YEARS,
D/O.SYAMA PRASAD, RESIDING AT
S.32, SANKAR NAGAR, KOLLAM - 691001.

BY ADV. SRI.C.RAJENDRAN.

RESPONDENTS:
----

1. **STATE OF KERALA, REPRESENTED BY**
   THE SECRETARY TO EDUCATION,
   GOVERNMENT OF KERALA, THIRUVANANTHAPURAM.

2. **THE DIRECTOR,**
   COLLEGIATE EDUCATION, THIRUVANANTHAPURAM.

3. **THE KERALA UNIVERSITY,**
   THIRUVANANTHAPURAM, REPRESENTED BY ITS
   REGISTRAR.

4. **THE UNIVERSITY GRANTS COMMISSION,**
   BAHADURSHAH ZAFAR MARG,
   NEW DELHI - 110 002.

5. **THE PRINCIPAL,**
   FATHIMA MATHA NATIONAL COLLEGE,
   KOLLAM.

W.P.(C). NO.17751/2007:

***ADDL.R6. THE PRINCIPAL,**
THE THANGAL KUNJU MUSLIAR
COLLEGE OF ARTS AND SCIENCE,
KOLLAM-5.

***IS IMPLEADED AS ADDL.R6. VIDE ORDER DTD. 31/07/07 IN I.A. NO. 10317/07.**

BY ADV. SRI.M.RAJAGOPALAN NAIR, SC, KERALA UTY.,
ADV. SRI.S.KRISHNAMOORTHY,
GOVT. PLEADER SRI. T.T. MUHAMOOD.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09/10/2007, ALONG WITH W.P.(C). NO. 21376/2007 AND CONNECTED CASES, THE COURT ON 17/10/2007 DELIVERED THE FOLLOWING:

W.P.(C). NO.17751/2007:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE M.A. DEGREE CERTIFICATE.

EXT.P.2: COPY OF THE M.PHIL DEGREE CERTIFICATE.

EXT.P.3: COPY OF THE LETTER NO. D.O. NO. F.1-1/2002 (PS) (EXEMP) DTD. 14TH JUNE,2006.

EXT.P.4: COPY OF THE ORDER BEARING NO. AD.H/2901/2007, THIRUVANANTHAPURAM, DTD. 31/01/2007.

EXT.P.5: COPY OF THE NOTIFICATION IN MALAYALA MANORAMA DAILY DTD. 16/05/07.

EXT.P.6: COPY OF THE ORDER G.O. P. NO. 86/07/H. EDN. DTD. 19/06/07.

EXT.P.7: COPY OF THE RELEVANT PAGES OF THE HINDU DAILY DTD. 27/06/2007.

EXT.P.8: COPY OF THE LETTER DTD. 04/09/2007.

EXT.P.9: COPY OF THE RELEVANT PAGE OF THOZHILVARTHA DTD. 06/10/2007.

RESPONDENT'S EXHIBITS: NIL.

//TRUE COPY//

prv.

S. SIRI JAGAN, J.

WP(C) Nos.
17751, 18274, 21315, 21337,
21376, 21508, 21809, 22771,
24129, 24681, 26183, 26527 &
24108 of 2007

Dated this the 17th day of October, 2007

J U D G M E N T

Annexure to the University Grants Commission (Minimum Qualifications required for the Appointment and Career Advancement of Teachers in Universities and Institutions Affiliated to it) Regulations, 2000, framed by the University Grants Commission, in exercise of powers conferred on it by clause (e) and (g) of sub-section (1) of Section 26 read with Section 14 of the University Grants Commission Act, 1956, prescribe the minimum qualifications for the post of Professors, Principals, Readers and Lecturers in subjects other than Fine Arts, Management, Engineering and Technology in Universities or Colleges, for appointment of persons through open advertisement and for their Career Advancement. For the post of Lecturer by Direct Recruitment, prior to its amendment by the Second Amendment Regulations, 2006 notified on 14.6.2006, the qualifications prescribed in the Regulations were:-

> "Good academic record with at least 55% of the marks or an equivalent grade of B in the 7 point scale with latter grades O, A,B,C,D,E and F at Master's degree level, in the relevant subject from an Indian University, or, an equivalent degree from a foreign University.
>
> Besides fulfilling the above qualifications, candidates should have cleared the eligibility test (NET) for Lecturers conducted by the UGC, CSIR or similar test accredited by the UGC.
>
> Note:- NET shall remain the compulsory requirement for appointment as Lecturer even for candidates having Ph.D.degree. However, the candidate who have completed M.Phil. Degree or have submitted Ph.D.thesis in the concerned subject upto 31st December, 1993, are exempted from appearing in the NET examination."

By the Second Amendment Regulations, the Note appearing at the bottom was substituted as follows:-

> "Note: NET shall remain the compulsory requirement for appointment as Lecturer for those with post-graduate degree. However, the candidates having Ph.D.degree in the concerned subject are exempted from NET for PG level and UG level teaching. The candidates having M.Phil degree in the concerned subject are exempted from NET for UG level teaching only."

The University of Kerala by order No.Ad.H/2901/2007 dated 31.01.2007, in accordance with the approval by the Academic Council in its meeting held on 13.12.2006, passed orders

approving the said modification by excluding the clause "the candidates having M.Phil Degree in the concerned subject are exempted from NET for UG level teaching only." It appears that the Mahatma Gandhi University and the Calicut University also followed suit, whereas the Kannur University and the Sree Sankaracharya University adopted the UGC amendment as such. The Government of Kerala by G.O(P) No.86/07/H.Edn. Dated 19.6.2007 ordered thus:

> "The UGC as per the notification read as 4th paper above, has modified the UGC regulations regarding minimum qualifications required for appointment and career advancement of teachers in Universities and institutions affiliated to them.
>
> 2. Government have examined the matter in detail and are pleased to order that "NET shall remain the compulsory requirement for appointment as Lecturer for those with Post-Graduate degree and M.Phil Degree. However, the candidates having Ph.D.Degree in the concerned subject are exempted from NET for Post Graduate level and Under Graduate level teaching"
>
> 3. The Government Order read as 3rd paper above stands modified to the above extent."

The Government also omitted the exemption granted to M.Phil degree holders from NET qualification for undergraduate teaching. Whether Universities in Kerala and the Government can validly do the same is the question posed before this Court in

this batch of writ petitions.

2. The contention of the petitioners is that in view of the Supreme Court decisions on the subject, the power to legislate on the co-ordination and determination of standards of institution of higher education or research and scientific and technical institutions, being exclusively vested with the Parliament, the Parliament having passed the University Grants Commission Act, 1956, constituting the University Grants Commission conferring it with the general duty to take all such steps as it may think fit for promotion and co-ordination of University education and for maintenance of standards of teaching, examination and research in Universities, the State Government and Universities are bound by the University Grants Commission (Minimum Qualifications required for the Appointment and Career Advancement of Teachers in Universities and institutions affiliated to it) Regulations, 2000 as amended, and neither the Universities or the State Government can prescribe norms inconsistent with those prescribed under those Regulations which has been done in this case. The contention is that just like the prescription of qualifications, any relaxation prescribed by the Regulations is also binding on the State Government and Universities and they cannot have

their own norms omitting any part of the Regulations prescribed by the U.G.C. In support of their contentions they refer to the provisions of the U.G.C. Act and the Regulations, orders on Revised U.G.C.Scheme, 1998 issued by the Government of Kerala and the Kerala University Regulations Relating to Qualifications of Teachers, as also the following decisions:-

Supreme Court

Prof. Yashpal and Another v. **State of Chhattisgarh and others** [(2005) 5 SCC 420].

Bharati Vidyapeeth (Deemed University) and others v. **State of Maharashtra and another** [AIR 2004 SC 1943).

University of Delhi v. **Raj Singh and others** [AIR 1995 SC 336].

Osmania University Teachers Association v. **State of Andhra Pradesh and another** [AIR 1987 SC 2034]

High Court of Kerala

Kerala Public Service Commission v. **Anto Francis** [2001(2) KLT 221].

Sudhakaran v. **University of Kerala** [2005(1) KLT 133]

High Court of Punjab and Haryana

Neeraja Malik v. State of Haryana (1997(2) SLR 166)

On these contentions, they challenge the University Order and the Government Order.

3. In answer to these contentions, the respondents would contend that the prescription is only against prescribing

standards adverse to or lower than those prescribed by the UGC and since by omitting a relaxation of essential qualification, they are essentially prescribing a higher standard, there is nothing inconsistent with the central legislation or the UGC Regulations. They refer to the decision of the Supreme Court in **State of T.N. and another** v. **S.V.Bratheep(Minor) and others** [(2004) 4 SCC 513], and a single Bench decision of this Court in W.P(C) No.9712 of 2007 in support. On these contentions, respondents would support the University Orders and the Government Order omitting the exemption granted to M.Phil degree holders from NET for UG level teaching.

4. I have considered the rival contentions in detail.

5. I do not find it necessary to deal with these contentions as to whether the Universities and Government can prescribe standards other than those prescribed by the UGC Regulations or whether the University and Government Orders prescribe higher standards than those in UGC Regulations, or whether prescription of higher standard than those prescribed by U.G.C. are valid or not etc., since according to me, there is no conflict between the U.G.C.Regulations and the Regulations prescribed by the Universities and Government with or without

the exemption to M.Phil degree holders from NET for UG level teaching in Kerala State as it stands now.

6. The new Regulations of U.G.C. exempts Ph.D. degree holders from NET for PG level and UG level teaching and M.Phil degree holders from NET for UG level teaching. These two separate standards for PG level and UG level teaching would be applicable only when there are two cadres of Lecturers in the State, one for PG level teaching and one for UG level teaching. In Kerala, there is only a composite cadre of Lecturer for both PG level teaching and UG level teaching now although there may be colleges imparting only UG level education. Formerly there were Demonstrators, Junior Lecturers and Lecturers having separate scales of pay and separate minimum qualifications. However, after delinking of Pre-degree courses from colleges, there is only one cadre of Lecturer to which appointment can be made by direct recruitment. Teachers recruited to that cadre takes classes for both Post graduate and Under-Graduate Courses. There is no separate cadre of teachers taking classes exclusively for UG courses. The latter exemption in the UGC Regulations to M.Phil degree holders applies only for recruitment to the exclusive cadre of UG level lecturers, if there is one. Since, in Kerala, there is no such exclusive cadre of

lecturers for UG level teaching, that latter part of the exemption would not apply to selection of lecturers in colleges in Kerala State. Even if that exemption is included in the Regulations regarding qualifications in colleges in the Kerala State, that exemption would not be applicable to selection of lecturers in the State since there is no separate cadre of UG level lecturers contemplated in the service of the colleges in Kerala State.

7. The petitioners would contend that in the State, there are colleges where only UG level education is imparted and the exemption would be applicable to selection of lecturers to such colleges where there is only UG level teaching. If that contention is accepted, there would come into being two separate cadres of lecturer without any corresponding University Statute, Ordinance, Regulation or Collegiate Education Special Rules, which cannot be permitted under law.

8. The same is also not practicable in the State where there are several Universities and both Government and Corporate Educational Agencies have colleges under these Universities, lecturers of which are liable to be transferred from a college under one University to a college under another university. If an interpretation that such relaxed qualification can be made applicable to selection of lecturers to colleges

imparting UG level education, exclusively is adopted, lecturers so selected can be transferred only to colleges having UG Courses which is not a situation envisaged in the colleges in the State of Kerala in the absence of any Rules or Regulations to that effect.

9. Assuming that even in colleges having PG studies, such teachers can be restricted to teaching UG Courses only, it would be impracticable for the UGC, University and Government authorities to ensure that such teachers are deputed to teach UG courses only. In fact, the ultimate result of allowing the same would be chaos and resultant lowering of standards of education in the State, the prevention of which is the object and purpose of the UGC Act and the UGC Regulations. Therefore, a more harmonious and purposeful construction, which would advance the object of the UGC Regulations would be that the exemption granted to M.Phil degree holders from NET for UG level teaching would be applicable only in States where there are collegiate service consisting of two separate cadres of lecturers, one exclusively for UG level teaching and the other for PG level teaching or composite UG and PG level teaching. Since in Kerala, there is only one cadre which is a composite cadre for UG level and PG level teaching, the exemption granted to M.Phil

degree holders from NET for UG level teaching would not apply to selection and appointment of lecturers in collegiate service in Kerala both in the Government and private sector and therefore, the exclusion or inclusion of the exemption to M.Phil degree holders from NET for UG level teaching in the Regulations would not make any difference, the result of which is that the exclusion of the same in the Regulations of the Universities in Kerala is not inconsistent with the UGC Regulations. In fact the fact that in the Kannur University and the Sree Sankaracharya University, the UGC Regulations as such have been adopted would not authorise selection of

lecturers not possessing NET or Ph.D., if they possess M.Phil Degree.

In that view, there is no merit in these writ petitions and therefore they are hereby dismissed. No costs.

S. SIRI JAGAN,
Judge

17th October,2007.

Mbs/

S.SIRI JAGAN, J

O.P. No.17641 OF 1999(A)

JUDGMENT

DATED:4-09-2007